Supreme Court, U. S.
FILED
JUL 28 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1823

L. B. MCFARLAND,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA SUPREME COURT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Did the trial court err in finding a tip from a reliable informant was supported by independent corroboration of the officer who wrote the affidavit in support of a search warrant?

STATEMENT OF THE CASE

Petitioner was convicted in the State Court of Lowndes County, Georgia, of the misdemeanor of keeping a gambling place. He was sentenced to 12 months imprisonment and a $5000 fine. His conviction was affirmed January 26, 1976. See McFarland v. State, 317 Ga. App. 354, ____ S.E. 2d ____ (1976). Rehearing was denied January 23, 1976, and the Georgia Supreme Court denied certiorari on March 11, 1976.

REASON FOR NOT GRANTING THE WRIT

THE PETITION FOR THE WRIT OF CERTIORARI IS NOT OF SUCH AN EXTRAORDINARY NATURE THAT IT REQUIRES THIS COURT TO ISSUE SUCH A WRIT.

"A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and controlling reasons therefor." Rule 19, Revised Rules of the Supreme Court of the United States (1970). This Court generally grants certiorari from a state court decision under the following circumstances: (1) if the state court has decided a federal question of substance not previously determined by this Court or (2) if the state court has decided a case in a way not in accord with applicable decisions of this Court. See Rule 19, Revised Rules of the Supreme Court of the United States (1970).

In his brief, Petitioner does not allege that Georgia law is contrary to federal law. He simply claims that the informant's tip was not corroborated by law enforcement officers. The Georgia Court of Appeals noted that the law enforcement officer's affidavit "was a lengthy eight-page chronicle summarizing approximately three weeks of GBI surveillance

[emphasis added] of the Lowndes County Country Club." McFarland v. State at 355-56. The Georgia Supreme Court saw that Petitioner's enumeration was patently frivolous and denied certiorari.

Now Petitioner asks the Supreme Court of the United States to review the finding of fact by a trial court that the informer's tip was corroborated by police surveillance. The writ of certiorari clearly is not to be granted under these circumstances. See N. L. R. B. v. Pitts. Steamship Co., 340 U.S. 498, 502 (1951).

CONCLUSION

This Court should refuse to grant a writ of certiorari because no sufficient reasons for review have been set forth by Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard L. Chambers, Attorney of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for Respondent in Opposition upon the petitioner by depositing a copy of same in the United States mail, with proper address and adequate postage to:

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This 27th day of July, 1976.

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